



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,572	04/22/2004	Daniel R. Wright	MTC 6875.1 (39-21(52751)B	6729
321	7590	06/06/2011	EXAMINER	
SENNIGER POWERS LLP 100 NORTH BROADWAY 17TH FLOOR ST LOUIS, MO 63102			BROWN, COURTNEY A	
			ART UNIT	PAPER NUMBER
			1617	
			NOTIFICATION DATE	DELIVERY MODE
			06/06/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspatents@senniger.com

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/829,572	Applicant(s) WRIGHT ET AL.
	Examiner COURTNEY BROWN	Art Unit 1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 May 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 29 -32,36-39,43,44,46-53,59 and 62-63 and 66.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/JANET L. EPPS -SMITH/
Primary Examiner, Art Unit 1633

Continuation of 3. NOTE: Newly added claims 71-85 introduce new limitations which would require further search and examination.

Continuation of 11. does NOT place the application in condition for allowance because: The examiner maintains the double patenting rejections between the claims of the instant application and over the claims of co-pending applications 11/368,872, 11/227,577 and 11/438,573 as well as the rejection of claims 29-32,36-39,43,44,46-53,59 /and 62-63 and 66 under 35 U.S.C. 103(a) as being unpatentable over Hacker et al. (US Patent 6,677,276 B1) in combination with Brigance (US 2002/0155953 A1) and Jimoh (US 2003/0004063 A1) for reasons of record. Applicant's arguments have been fully considered, but are not found persuasive.

With regards to the double patenting rejections between the claims of the instant application and over the claims of co-pending applications 11/368,872, 11/227,577 and 11/438,573, Applicant argues that the double patenting rejections are premature. Applicant argues that depending on the sequence of grant and issue, and/or the nature and substance of the claims ultimately granted, there may never be a need to deal with the grounds on which the double patenting rejections are based. Thus, the nonstatutory obviousness-type double patenting rejections have been maintained until a terminal disclaimer is filed or other appropriate action is taken.

With regards to the rejection of claims 29-32,36-39,43,44,46-53,59 /and 62-63 and 66 under 35 U.S.C. 103(a) Applicant argues that that the Office action fails to support the threshold finding of prima facie obviousness and that the Graham analysis offered by the PTO fails at the outset to adequately identify the differences between the claimed invention and the prior art. Applicant argues that these differences include the combination of glyphosate and a pyridine analog co-herbicide, a combination which the references do not disclose, and a weight ratio of glyphosate to pyridine co-herbicide between about 7.6:1 and about 20:1, which the references also fail to disclose. Applicant argues that the final action then proceeds to reconstruct the claimed invention by picking among the elements that are disclosed in the references, but fails to identify any reason in the art for the claimed combination, and entirely fails to find any teaching that can even be reconstructed to yield the 7.6:1 to 20:1 glyphosate to pyridine analog ratio called for in claim 29, the 8:1 to 20:1 ratio called for in claim 62, or the ratios of claim 46 which vary from a range of 7:1 to 20:1 for formulations containing less than 315 g/L glyphosate salt a.e. to 10:1 to 20:1 for formulations containing less than 326 g/L glyphosate salt a.e.

However, Applicant's arguments are not found persuasive because Hacker et al. teach herbicide combinations (A)+(B), with an effective content of (A) herbicides from the group (A2) glyphosate (salts)(preferably its alkali metal salts or salts with amines, in particular glyphosate isopropylammonium and the sodium salt of glyphosate and (B) herbicides from the group (B2) predominantly foliar-acting herbicides, such as clopyralid (a pyridine analog). Hacker et al. teach that synergistic effects are observed when the active ingredients (A) and (B) are applied jointly and that glyphosate is usually employed in the form of a salt, preferably in the form of a monoisopropylammonium salt or a trimethylsulfoxonium salt and that the application rates of the aforementioned herbicide combination is in the range of 20 to 2000, preferably 20 to 1000, in particular 20 to 800, g of A.S./ha. Hacker et al. teach that quantitative ratios of (A2):(B2) of particular interest is from 2000:1 to 1:250, preferably from 1000:1 to 1:150, in particular from 200:1 to 1:50, very particularly preferably from 60:1 to 1:20.

Brigance teaches an adjuvant composition for pesticide formulations, particularly in N-hosphonomethylglycine (glyphosate) herbicidal formulations which can be formulated with picloarm (a pyridine analog). Brigance teaches the herbicidal composition comprising about 50 to about 500 grams acid equivalent /L, preferably between about 360 to about 500 grams acid equivalent/L ([0069]).

Jimoh teaches stable, liquid concentrate herbicidal compositions comprising a water-soluble herbicide in a continuous aqueous phase and an oil-soluble herbicide in a discontinuous oil phase. Jimoh teaches the oil-soluble herbicide being present in a concentration such that the weight ratio of water-soluble herbicide (glyphosate) to oil-soluble herbicide (dithiopyr and thiazopyr) ranges from about 190:1 to about 1:1 ([0038]).

With regards to the claimed ratios of the herbicidal actives, the adjustment of particular conventional working conditions is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan. Accordingly, one skilled in the art at the time the invention was made would have been motivated to make this type of modification as being well within the purview of the skilled artisan and no more than an effort to optimize results. Therefore, the claimed invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made because every element of the invention has been fairly suggested by Hacker et al., Brigance and Jimoh.

Thus, the rejection is maintained for reasons of record and the foregoing commentary. New claims 71-85 has been submitted adding new limitations such as the pyridine analog being in its acid or salt form (see new claim 75) which also requires further consideration. Refer to the Final rejection, mailed on February 23, 2011.

Claims 29-32,36-39,43,44,46-53,59 /and 62-63 and 66 remain rejected.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR Only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Courtney Brown, whose telephone number is 571-270-3284. The examiner can normally be reached on Monday-Friday from 8 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Fereydoun Sajjadi can be reached on 571-272-3311. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Courtney A. Brown
Patent Examiner
Technology Center 1600
Group Art Unit 1617